



OFFICE OF THE
COMMISSIONER OF RAILROADS
STATE OF WISCONSIN

JEFF PLALE, COMMISSIONER

610 N. Whitney Way
P.O. Box 7854
Madison, WI 53707-7854
Tel: (608) 266-0276
Fax: (608) 261-8220
<http://ocr.wi.gov>

Public Service Commission of Wisconsin
RECEIVED: 06/16/14, 11:21:23 AM

June 16, 2014

9164-RX-807

Re: Petition of the Wisconsin Central Ltd. for the Closure of the Public Crossings of Its Tracks with 1st Street and Blackburn Street in the Village of Bruce, Rusk County

To The Person Addressed:

Enclosed with this letter you will find the Proposed Decision of the Hearing Examiner. This proposed decision is the hearing examiner's recommendation and not the final decision of the Commissioner of Railroads. The Commissioner will issue a final decision only after considering any written comments on the proposed decision.

Comments, either in support or in opposition, must be filed in writing in time to reach the Office of the Commissioner of Railroads (OCR) not later than 15 days from the date of this letter. One copy of the comments must be filed with the OCR and one copy served by regular mail or in person upon each party of record. Generally, "parties" include those persons and organizations listed in the "Appearance" section of the proposed decision (but not including any members of the OCR staff).

This 15-day period is your opportunity to file any comments on the proposed decision. Comments need not follow any particular format nor do they need to be elaborate. A clear, concise and specific explanation of your comments is sufficient and helpful. Short extensions may be granted upon request in writing or by telephone.

Sincerely,

Douglas S. Wood, Hearing Examiner
Enclosure

9164P807/dw

BEFORE THE OFFICE OF THE COMMISSIONER OF RAILROADS

STATE OF WISCONSIN

In the Matter of the:

Petition of the Wisconsin Central Ltd. for the Closure of the Public Crossings of Its Tracks with 1st Street and Blackburn Street in the Village of Bruce, Rusk County

9164-RX-807

PROPOSED DECISION

By letter dated June 3, 2013 the WCL filed a petition with the Office of the Commissioner of Railroads (OCR) under Wis. Stat. §§ 195.28 and 195.29 for the closure of the public crossings of its tracks with 1st Street and Blackburn Street in the Village of Bruce, Rusk County (Crossing Nos. 691 253N / MP 121.36 and 691 248S / MP 121.18). When a crossing is closed, the roadway is terminated at the tracks and permanently closed to public travel.

Pursuant to due notice, a public hearing was held in this matter on November 6, 2013 in Bruce, Wisconsin with hearing examiner Douglas S. Wood presiding.¹

Appearances:

Parties

Wisconsin Central Ltd. , Petitioner
by
Michael Barron, Attorney
Fletcher & Sippel
29 N. Wacker Drive, Suite 920
Chicago, IL 60606-2832

In Opposition:

Village of Bruce
by
William G. Thiel
Weld, Riley, Prenn & Ricci, S.C.
3624 Oakwood Hills Parkway
Eau Claire, WI 54701

PROPOSED FINDINGS OF FACT

The Wisconsin Central Ltd. petitioned the Office of the Commissioner of Railroads for the potential closure of the public crossings of its tracks with 1st Street and Blackburn Street in the Village of Bruce. Having considered all the evidence in the record, the **hearing examiner recommends that the 1st Street crossing be closed and the Blackburn Street crossing remain open.**

At the time of the hearing, the railroad operated 2 through trains per day through Bruce at a speed of 25 mph. Railroad witnesses testified that train speed would increase to 40 mph in the summer of 2014. On June 11, 2014, the railroad did

¹ The OCR now publishes all notices, orders, proposed decisions and final decisions on the Internet. These documents may be accessed at either <http://ocr.wi.gov/apps40/dockets/default.aspx> or on the Public Service Commission's website at <http://psc.wi.gov/>

in fact increase train speed to 40 mph. The railroad's witnesses also stated that train operations would increase due to the then-impending opening of a new frac sand production, storage and rail-loading facility in Weyerhaeuser. That facility began operating on May 30, 2014. The railroad is still operating two trains on most days, but the trains are longer now. On some days, the Weyerhaeuser facility also ships an additional 100-car unit trains of finished frac sand and on those days, the railroad operates 4 trains through Bruce.

Each crossing consists of one mainline track on the railroad's Barron Subdivision. The Barron Subdivision was out of service for approximately 15 years before reopening in November 2013 to serve a frac sand operation in Poskin.

Train-vehicle accidents that occur at either crossing will likely be quite serious if a through train is involved due to their 40 mph speed. Train speed is strongly correlated with fatalities in train/vehicle accidents. More specifically, crossings with train speeds of 40 mph and over have a disproportionate number of fatalities.

At the time of the hearing, both the 1st Street and Blackburn Street crossings had crossbucks with YIELD signs for warning devices. Subsequent to the hearing, the Village Board adopted an ordinance pursuant to its authority under Wis. Stat. § 349.085 to require the installation of STOP signs at each crossing. The STOP signs were installed in December 2013.

1st Street

1st Street is 32' wide with a rural cross-section and intersects the tracks at an angle of about 78°. The roadway approaches to the crossing are nearly level. 1st Street carried 823 ADT (average daily traffic) in a 2012 traffic count. The speed limit is 25 mph. 1st Street extends ½ mile between USH 8 and Red Raider Avenue.

A driver traveling at 25 mph needs a stopping sight distance of 187'. The crossing warning devices are visible from more than 187' in each direction. The stopping sight distance is adequate.

Assuming a train speed of 40 mph, a driver traveling at 25 mph needs to see a train when it is 420' from the crossing from a point 187' down the highway.² The sight distance available in each quadrant from the safe stopping distance is greater than 420' except in the southeast quadrant where the view is obstructed by buildings and trees. Corner sight distance is inadequate in the southeast quadrant.

At all crossings, except those with gates, a driver stopped 15' short of the near rail must be able to see far enough down the track, in both directions, to determine if sufficient time exists for moving their vehicle safely across the tracks to a point 15' past the far rail, prior to the arrival of a train. Required clearing sight distance along both directions of the track, from the stopped position of the vehicle, is dependent upon the maximum train speed and the acceleration characteristics of the "design" vehicle. The necessary clearing sight distance at the 1st Street crossing is 895'. The available clearing sight distance is greater than 895'. The clearing sight distance is adequate.

One train-vehicle accident has occurred at this crossing since 1973. The crash occurred in 1979.

Blackburn Street

Blackburn Street is 32' wide with a rural cross-section and intersects the tracks at an angle of about 78°. The roadway approaches to the crossing are essentially level on the south and descending toward the crossing at a 1.40% grade on the north. Blackburn Street extends 1600' from USH 8 to Railroad Avenue. Blackburn Street is controlled by a STOP sign at its t-intersection with USH 8. Blackburn Street carried 422 ADT according to a 2012 traffic count. The speed limit is 25 mph.

² The necessary corner sight distance increased from 265' to 420' as a result of the increase in train speed from 25 mph to 40 mph.

The Blackburn Street crossing warning devices are visible from more than 187' in each direction. The stopping sight distance is adequate.

The sight distance available in each quadrant from the safe stopping distance is greater than the required 420' in all quadrants, except the southwest quadrant where a motorist's view is obstructed by buildings and trees. The corner sight distance is inadequate in the southwest quadrant.

The necessary clearing sight distance at the Blackburn Street crossing is 895'. The available clearing sight distance is greater than 895'. The clearing sight distance is adequate.

Four train-vehicle accidents have occurred at this crossing since 1973. The crashes occurred in 1978, 1987, 1996 and 1997 with a total of six injuries and one fatality.

Layout of the Village of Bruce, the Rail-highway Crossings and Alternate Routes

The Village of Bruce consists primarily of a compact residential and commercial area bounded by USH 8 on the south and Red Raider Avenue on the north. The WCL tracks run essentially through the middle of the Village. South of the tracks the Village is nine blocks long east to west and one block long north to south. North of the tracks the Village is five blocks long east to west and one and two blocks long north to south.

Three north-south streets cross the tracks in the Village center within a total of 895' of one another: Blackburn Street, Main Street, and 1st Street. These streets are connected by roads running parallel to and immediately north and south of the tracks (Railroad Avenue on the north and River Avenue on the south). It is 310' from 1st Street to Main Street and an additional 675' from Main Street to Blackburn Street.

Blackburn Street is the shortest of the three streets that cross the tracks and carries the lowest volume of traffic (422 ADT), but it provides direct access for Village's Fire Department to USH 8. The Fire Hall, where the department's fire-fighting apparatus are located, is on Blackburn Street at Railroad Avenue. Main Street carries by far the highest traffic volume (2200 ADT) of the three roadways. Main Street extends north from USH 8 directly to the Bruce school located at Main Street and Washington Avenue. Main Street also continues south of USH 8 as STH 40. The Main Street crossing has cantilevered and mast-mounted 12" LED automatic flashing lights for warning devices. 1st Street carries 823 ADT, most of which is through traffic. The Village's ambulance is housed in a garage on River Avenue just east of 1st Street.

A fourth crossing, STH 40, also serves the Bruce area. This crossing was established by order of OCR in 1999 (docket 9164-RX-377) when DOT established a new route for STH 40 west of the Village center, which allowed inter-city traffic, especially semi-trucks, to avoid traveling through the central business district. STH 40 previously was routed on Main Street through the Village center. The STH 40 crossing is about 2740' west of Blackburn Street, as measured along the tracks. However, using the STH 40 crossing as a substitute for the Blackburn Street crossing adds about 1.6 miles travel distance (traveling on Blackburn Street/Railroad Avenue/STH 40/USH 8/Blackburn Street). In October 2012, the OCR ordered the WCL to install 12" LED automatic flashing lights with gates at the STH 40 crossing, which were installed prior to November 2013.

Discussion of Proposed Closing Two Crossings

The railroad proposes the closure of both the Blackburn Street and 1st Street crossings. The Village opposes the closure of either.

Only the crossings at Blackburn Street, Main Street and 1st Street are located on reasonably adequate alternate routes for purposes of evaluating the proposed closures. The STH 40 crossing is too far from the Village center to be considered a

reasonable alternate route to Blackburn Street (added travel time of 3:39 minutes and 1.6 miles distance).

The availability of east-west streets running parallel to the tracks immediately north and south of the tracks that also connect Blackburn Street to 1st Street means that the closure of either Blackburn Street, 1st Street or both could be accomplished with little or no additional travel time or distance. It does not necessarily follow that either or both the crossings can be closed without an unacceptably large negative impact on public safety and convenience.

If *both* Blackburn Street and 1st Street are closed, then Main Street would provide the only connection between the southern and northern halves of the Village. Any event that prevented the use of the Main Street crossing would temporarily separate the two halves of the community.³ In that case, STH 40 would provide the only way to travel between the northern and southern parts of the Village until the Main Street crossing was back in use. Not only would this be inconvenient for residents and businesses, but more importantly, it would significantly limit the Fire Department. Emergency response times from the Village Fire Department (located north of the tracks on Blackburn Street at Railroad Avenue) would drastically increase.

The increase in response time would be especially severe for emergencies south of the tracks. Two-thirds of fire calls in 2013 (49 of 73) were to locations south of the tracks. The Bruce Fire Department is a volunteer organization. Of the 26 volunteers on the department, 16 live south of the tracks. When a call comes in, the volunteers must first travel to the Fire Hall, where the department's fire-fighting equipment is located. If both Blackburn Street and 1st Street were closed and the Main Street crossing was temporarily obstructed, fire department volunteers leaving from the Fire Hall would have to use the circuitous route over the STH 40 crossing to reach their destination. Moreover, volunteers responding to the Fire Hall from a location south of the tracks would also have to take that route to get to the Fire Hall.

Even when the Main Street crossing is accessible, the Fire Department can respond faster and safer using the Blackburn Street crossing. Blackburn Street provides direct access from the Fire Hall to USH 8. Visibility for drivers entering USH 8 is better at the USH 8/Blackburn Street intersection than at USH 8/Main Street where a hill obstructs the view. If the Blackburn Street crossing were closed, the Fire Department would routinely have to use Main Street to reach USH 8, which would add two turning movements to all trips and about 1350' travel distance for fire calls south of USH 8 and east of Blackburn Street. Additional turns, while not a big deal for automobiles, add significantly more time for fire trucks.

Closing *both* the Blackburn Street and 1st Street crossings would provide some benefits to public safety by concentrating all of the traffic at a single crossing and thereby maximizing the 'queuing effect' and by diverting 1250 ADT from crossings with passive warning devices to a crossing with automatic flashing lights.

The queuing effect occurs when a driver approaching a crossing when a train is also approaching the crossing will find that another vehicle has already stopped for the crossing. The more traffic using a crossing, the greater the chance that queuing will occur. Very few drivers will drive around a vehicle that has already stopped at a crossing as a train approaches. The queuing effect has a powerfully positive effect on public safety because it operates at the very time of greatest risk: when a train is approaching the crossing. Closing both crossings would also improve public safety by diverting all traffic on Blackburn Street and 1st Street away from crossings with passive warning devices to a crossing with train-activated automatic flashing lights (Main Street). However, closing *both* crossings would also create counterbalancing negative impacts on public safety and convenience that outweigh those benefits.

Closing both crossings would limit access across the tracks to a single crossing at Main Street leaving the entire Village center with just one route connecting the halves of the Village. As noted above, the Main Street crossing will inevitably

³ For example, a train blocking the crossing, a simple automobile crash or a water main break on Main Street could make the crossing temporarily inaccessible. And all rail-highway crossings eventually need to be rebuilt, which requires the complete closure of the crossing during its reconstruction. Such crossing reconstruction typically takes about 5 to 7 days during which the Main Street crossing would be completely out of service.

be closed to traffic from time to time for a variety of reasons. If both crossings are closed and Main Street is shut off, then *all* traffic between the northern and southern parts of the Village would be forced to use the circuitous route over the STH 40 crossing. Each such trip by the general public would cause the inconvenience occasioned by traveling a significantly longer route at a cost of time and money. More importantly, as described above, emergency service response times would dramatically increase as long as the Main Street crossing was out of service. Closure of *both* crossings would not promote public safety and convenience.

Discussion of Closing One Crossing and Which One

Closure of one rather than both crossings would not materially impact public convenience because Railroad Avenue and River Avenue run parallel to the tracks immediately north and south of the tracks and connect Blackburn Street to Main Street to 1st Street.

Closing *either* the Blackburn Street or 1st Street crossing would improve public safety by concentrating more traffic at the Main Street crossing, which will reduce the likelihood of a train-vehicle crash as a result of the 'queuing effect'. Closing either crossing will also divert traffic from a crossing with passive warning devices to a crossing with automatic flashing lights.

Because 1st Street carries 823 ADT and Blackburn Street carries 422 ADT, closing the 1st Street crossing would have a greater positive impact on public safety at the crossing than closing Blackburn Street. The closure of 1st Street would create a larger queuing effect by concentrating a larger volume of traffic at the two remaining crossings than closing Blackburn Street would. In other words, closing 1st Street will increase the probability that a driver approaching either the Main Street or Blackburn Street crossing will find that another driver has already stopped more than closing Blackburn Street would.

Because Main Street is almost 700' closer to 1st Street than Blackburn Street, most of the traffic currently using 1st Street will use Main Street. Since 1st Street carries almost twice as much traffic as Blackburn Street, closing 1st Street will divert more traffic from a passive crossing to one with automatic flashing lights than closing Blackburn Street would.

Not only would closing Blackburn Street have a smaller positive impact on public safety than closing 1st Street, but closing Blackburn Street would also have a negative impact on the fire department's ability to respond to emergencies. Because the fire hall is located north of the tracks, while two-thirds of the fire calls are south of the tracks and over 60% of the volunteers live south of the tracks, keeping the Blackburn Street crossing open is of vital importance for the safety of the community.

Main Street provides a convenient alternate route to the 1st Street crossing. Users of 1st Street have ready access to Main Street on both sides of the tracks via Railroad Avenue and River Avenue. The closure of 1st Street will have almost no impact on travel time or distance for current users of the 1st Street crossing. Because Blackburn Street is 675' from Main Street while 1st Street is only 310' from Main Street, closing 1st Street will result in less additional travel distance than closing Blackburn Street (although given the convenient connecting streets, closing Blackburn Street would cause little added travel either).

In sum, closing one of the three rail-highway crossings that are located within 985' of one another will promote public safety without a material impact on public convenience. All three north-south roads are interconnected by two east-west roadways located on opposite sides of the tracks and immediately adjacent to the tracks. Currently, the 3600 vehicles per day using these three streets is dispersed over three separate crossings which dilutes the queuing effect's deterrence of crossing violations in the presence of approaching trains. Eliminating one of the crossings will make it more likely that a queue will form when a train is approaching the remaining two crossings. Closing either crossing would also improve public safety by diverting traffic from a crossing with passive warning devices to a crossing with train-activated automatic flashing lights (Main Street).

Closing one crossing and leaving two open rather than closing two crossings and leaving one open will provide a significantly more reliable local transportation network by increasing the probability that at least one of the two crossings will always remain in service. Closing one of the three crossings would improve public safety while not materially harming public convenience. Closing 1st Street rather than Blackburn Street is a clear-cut choice on grounds of both public safety and convenience.

The closure of the 1st Street crossing will promote public safety by diverting traffic from a crossing with passive warning devices to a crossing with train-activated automatic flashing lights (and diverting more traffic than closing Blackburn Street would). With the closure of 1st Street, the existing access to the Fire Hall on Blackburn Street would be maintained. Closure of 1st Street would achieve nearly all of the queuing effect benefits that would have accrued from closing two crossings. Finally, 1st Street is closer to Main Street than Blackburn Street is (310' compared to 675'), which would minimize any travel redirection caused by a closure.

End-of-Road Treatment

Vehicular turnarounds will not be needed on either side of the tracks after the 1st Street crossing is closed. The closure will not create a dead-end on either side of the tracks because of the presence of the parallel roads on each side of the tracks.

The Village of Bruce shall install Type III barricades and ROAD CLOSED signs on each approach to the 1st Street crossing no later than September 1, 2014. The Type III barricades shall extend entirely across the width of the roadway. After the Type III barricades and ROAD CLOSED signs are in place, the Wisconsin Central Ltd. shall remove the crossing surface and obliterate the roadway within the railroad right-of-way.

The temporary barricades shall remain in place after the crossing is removed until the Village of Bruce installs at least three end-of-roadway markers on each approach to the former crossing.

All barricades and signage shall conform to the federal Manual on Uniform Traffic Control Devices (MUTCD) and the Wisconsin Manual on Uniform Traffic Control Devices (WMUTCD). The WMUTCD modifies some sections of the MUTCD.

The MUTCD is available on the Internet at http://mutcd.fhwa.dot.gov/kno_2009r1r2.htm and the WMUTCD can be found at <http://www.dot.wisconsin.gov/business/engrserv/wmutcd.htm>

Type III barricades are described in Sections [2B.67](#) and [6F.68](#) and shown [Figure 6F-7](#) (see image below) of the MUTCD. End-of-Roadway markers are described Section [2C.66](#) and shown [Figure 2C-13](#) (see image below). Section 2C.66 of the WMUTCD prohibits the use of OM4-2. ROAD CLOSED signs are described in [Section 2B.58](#), sign R11-2 and shown in [Figure 2B-29](#).

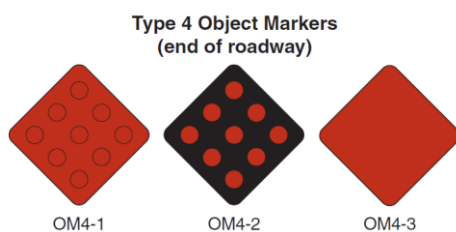


Figure 2C-13

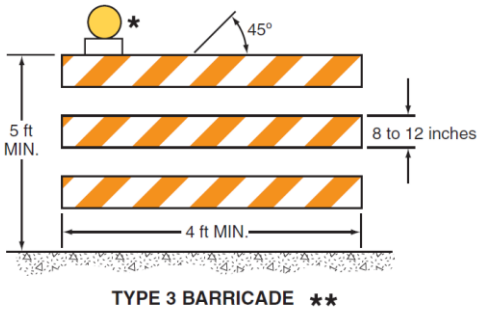


Figure 6F-7

Costs

Consistent with prior OCR practice, this **proposed** order apportions most of the costs of the closure to the railroad. The order requires the Wisconsin Central Ltd. to bear the cost to remove the 1st Street crossing and obliterate the roadway within the railroad's right-of-way. Obliterating the roadway requires more than merely removing the roadway surface. The goal of obliterating the roadway is to eliminate visual evidence that a roadway used to be there, which creates a more attractive appearance and reduces the likelihood that drivers might attempt to use the former street in the mistaken belief that the roadway still exists. The Village of Bruce shall bear the cost to install and maintain the temporary barricades, end-of-roadway markers and ROAD CLOSED signs. While the Village opposed the closure of either crossing, it is reasonable to apportion a share of the cost to close the 1st Street crossing to the Village because the closure will benefit public safety and convenience.

PROPOSED ULTIMATE CONCLUSIONS ON THE ISSUES

1. That the closure of the crossing at-grade of the Wisconsin Central Ltd. tracks with 1st Street in the Village of Bruce, Rusk County will promote public safety and convenience.
2. That the closure of the crossing at-grade of the Wisconsin Central Ltd. tracks with Blackburn Street in the Village of Bruce, Rusk County would not promote public safety and convenience.
3. That it is reasonable for the Wisconsin Central Ltd. to bear the costs to remove the crossing surface and obliterate the 1st Street roadway within the railroad right-of-way.
4. That it is reasonable for the Village of Bruce to bear the cost to install and maintain the barricades and signage necessary to close the crossing.

PROPOSED CONCLUSION OF LAW

That Wis. Stat. §§ 195.03 (2), 195.28 and 195.29 provides jurisdiction over this matter to the Office of the Commissioner of Railroads. This order is issued pursuant to that authority and consistent with the findings of fact.

PROPOSED ORDER

The hearing examiner recommends:

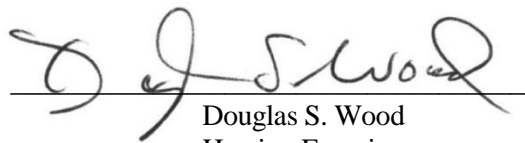
1. That the petition of the **Wisconsin Central Ltd.** for the closure of the **Blackburn Street** crossing be denied.
2. That the petition of the **Wisconsin Central Ltd.** for the closure of the **1st Street** crossing be granted.
3. That the **Village of Bruce** shall install and maintain the following barricades, signs and markers for the **1st Street** crossing at-grade:
 - a) ROAD CLOSED signs (R11-2 in the MUTCD) on each approach by **September 1, 2014;**
 - b) Temporary Type III barricades (2B-67) with reflective red and white stripes extending across the entire roadway width on each approach by **September 1, 2014;**
 - c) At least three end-of-roadway markers (Figure 2C-13, Type 4-1 or 4-3 Object Markers) on each approach after the Wisconsin Central Ltd. removes the crossing surface and obliterates the roadway within its right-of-way. After the Village of Bruce installs the end-of-roadway markers, the Type III barricades shall be removed.
4. That the **Wisconsin Central Ltd.** shall remove the crossing surface and obliterate the roadway within its right-of-way for the crossing at-grade of **1st Street** with its tracks in the Village of Bruce, Rusk County **after September 1 and before October 1, 2014** (crossing no. 691 253N / MP 121.36), provided that the **Wisconsin Central Ltd.** shall not remove the crossing surface or approaches until the barricades are in place.

Costs

5. That the **Wisconsin Central Ltd.** shall bear the entire cost to remove the crossing and obliterate the roadway approaches within its right-of-way at the **1st Street** crossing.
6. That the **Village of Bruce** shall bear the costs to install and maintain the temporary barricades, ROAD CLOSED signs and the end-of-roadway markers at the former **1st Street** crossing.
7. Notwithstanding any other cost apportionment set forth in this order, the **Wisconsin Central Ltd.** shall bear any cost assessed to the railroad pursuant to Wis. Stat. § 195.60 for the investigation of this matter by the Office. The railroad shall not pass on those assessment costs either directly or indirectly.
8. That jurisdiction is retained.

Dated at Madison, Wisconsin, June 16, 2014.

By the Office of the Commissioner of Railroads.


Douglas S. Wood
Hearing Examiner